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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/751,619	01/05/2004	Max P. McDaniel	51757-0623 (51757-296203)	2424
35395	7590	05/26/2004	EXAMINER	
JEFFERY B. ARNOLD - CHEVRON WOMBLE CARLYLE SANDRIDGE & RICE, PLLC ONE ATLANTIC CENTER - SUITE 3500 ATLANTA, GA 30309			LU, C CAIXIA	
			ART UNIT	PAPER NUMBER
			1733	

DATE MAILED: 05/26/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/751,619	Applicant(s) MCDANIEL ET AL.	
	Examiner Caixia Lu	Art Unit 1713	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 26-49 is/are pending in the application.
4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 26-49 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date ____. | 6) <input type="checkbox"/> Other: ____. |

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 26-49 are rejected under 35 U.S.C. 112, second paragraph, as failing to set forth the subject matter which applicant(s) regard as their invention. Evidence that the claims fail to correspond in scope with that which applicant(s) regard as the invention can be found in the specification (page 2, the last paragraph to page 3, 2nd paragraph) as originally filed, where applicants state that the composition of matter can be produced by contacting an organometal compound, a solid Lewis acid compound (solid mixed oxide) and an organoaluminum compound, and this statement indicates that the invention is different from what is defined in the claims because the instant claims do not require the presence of both of the organometal compound and the organoaluminum compound in the composition.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 26-49 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ernst et al. (US 6,225,252).

Art Unit: 1713


Ernst's working examples such as Examples 1 and 2 of cols. 7-8 teach a supported catalyst composition comprising silica, bis(trimethylsilyl)silanediybis(2-methylindenyl) zirconium dichloride and triisobutylaluminum. It is noted that the support of Ernst's working examples is silica alone rather a solid mixed oxide, however, the mixed oxide is expressly taught in Ernst's Abstract and col. 2, line 3. It is also noted that Ernst does not expressly teach the activity of the catalyst toward ethylene polymerization. However, based on the high activities of propylene polymerizations shown in the working examples, one would have expected the activities of Ernst's catalyst for ethylene polymerization to be at least in the ranges of the instant claims when tested.

Thus, it would have been obvious to a skilled artisan at the time the invention was made to employ Ernst's teaching to provide a catalyst composition by using a mixed oxide support since such is within the scope of Ernst's invention and in the absence of any showing criticality and unexpected results.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Caixia Lu whose telephone number is (571) 272-1106. The examiner can normally be reached from 9:00 am to 3:30 pm.

If attempts to reach the examiner by telephone are unsuccessful and the matter is urgent, the examiner's supervisor, David Wu, can be reached at (571) 272-1114. The fax numbers for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (571) 272-1700.


Caixia Lu, Ph. D.
Primary Examiner
May 21, 2004